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SENATE BILL 513

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Mary Kay Papen

AN ACT

RELATING TO HEALTH; ENACTING THE TRADITIONAL NATUROPATHIC PRACTICE ACT; CREATING A BOARD; PROVIDING POWERS AND DUTIES; CREATING A FUND; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Traditional Naturopathic Practice Act".

Section 2. LEGISLATIVE PURPOSE.--The purpose of the Traditional Naturopathic Practice Act is to protect the public from the unprofessional, improper, incompetent and unlawful practice of traditional naturopathy by providing laws and rules to govern the practice of traditional naturopathy.

Section 3. DEFINITIONS.--As used in the Traditional Naturopathic Practice Act:

A. "board" means the board of traditional

1 naturopathy;

2 B. "department" means the regulation and licensing
3 department;

4 C. "homeopathy" means a system of medicine based on
5 the use of infinitesimal doses of medicines capable of
6 producing symptoms similar to those of the disease treated and
7 stimulating the body's intrinsic self-healing, as listed in the
8 homeopathic pharmacopoeia of the United States;

9 D. "hygiene and immunizations" means the use of
10 such preventive techniques as personal hygiene, asepsis, public
11 health prevention and reporting responsibilities and
12 immunizations;

13 E. "medicines of mineral, animal and botanical
14 origin" means medicines derived from animal organs, food, food
15 extracts, tissues and oils, minerals and plants, plant extracts
16 administered orally or topically, excluding legend drugs, with
17 the following exceptions: vitamins, minerals, natural
18 hormones, whole gland thyroid and substances as exemplified in
19 traditional botanical, homeopathics and herbal pharmacopoeia
20 and non-drug contraceptive devices;

21 F. "natural hormones" means plant- and glandular-
22 derived hormones;

23 G. "traditional naturopath" means a person who has
24 satisfied the requirements of the Traditional Naturopathic
25 Practice Act and is licensed to practice traditional

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1 naturopathy as an independent health care provider and who
2 collaborates with other health care providers as necessary;

3 H. "traditional naturopathy" means a system of
4 health care practiced by traditional naturopaths for the
5 prevention, diagnosis and treatment of human health conditions,
6 injuries and diseases that uses education, natural medicines,
7 homeopathy, traditional naturopathic physical medicine and
8 therapies to support and stimulate a person's intrinsic self-
9 healing processes, including, for diagnostic purposes, physical
10 and orificial examinations, phlebotomy, diagnostic imaging,
11 electrocardiograms, ultrasound, clinical laboratory tests,
12 examinations and physiological function tests;

13 I. "traditional naturopathic physical medicine"
14 means the use of physical agents of air, water, heat, cold,
15 sound, light, electromagnetism, electricity, soft tissue
16 therapy, joint mobilization and therapeutic exercise in the
17 resolution of human ailments and conditions; and

18 J. "traditional naturopathic school" means a
19 facility that provides an educational program in traditional
20 naturopathic training that is approved by the board and
21 accredited by a state, national or international naturopathic
22 association or recognized by the commission on higher
23 education.

24 Section 4. SCOPE OF PRACTICE.--

25 A. A traditional naturopath may use for preventive

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1 and therapeutic purposes the following natural medicines and
2 therapies: food; food extracts; medicines of mineral, animal
3 and botanical origin; vitamins; minerals; enzymes; digestive
4 aids; whole gland thyroid; plant homeopathic preparations;
5 topical natural medicines; counseling; biofeedback; dietary
6 therapy; hygiene; traditional naturopathic physical medicine;
7 nutritional and lifestyle counseling; traditional naturopathic
8 physical examinations; and electro-optical mechanical devices
9 and microscopy.

10 B. A traditional naturopath may engage in those
11 preventive and therapeutic practices set forth in Subsection A
12 of this section, may prescribe and dispense natural hormones,
13 therapeutic devices, except for those used exclusively by
14 practitioners licensed pursuant to Chapter 61, Article 14A NMSA
15 1978, and barriers for contraception, and may, for diagnostic
16 purposes, use physical and orificial examinations, diagnostic
17 imaging, electrocardiograms, ultrasound, clinical laboratory
18 tests, phlebotomy, examinations and physiological function
19 tests.

20 Section 5. LICENSE REQUIRED.--Unless licensed pursuant to
21 the Traditional Naturopathic Practice Act, a person shall not:

22 A. advertise, hold out to the public or represent
23 in any manner that the person is licensed to practice
24 traditional naturopathy in the state; or

25 B. maintain, manage or operate a traditional

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1 naturopathic school offering education, instruction or training
2 in traditional naturopathy unless the school is approved by the
3 board.

4 Section 6. USE OF TERMS.--A person licensed as a
5 traditional naturopath pursuant to the provisions of the
6 Traditional Naturopathic Practice Act, in all promotion and
7 advertising services to the public, shall use the title
8 "traditional naturopath" or the designation of "TN" or "ND,
9 Naturopathic Diplomat".

10 Section 7. EXEMPTIONS.--

11 A. Nothing in the Traditional Naturopathic Practice
12 Act is intended to limit, interfere with or prevent a licensed
13 health care professional from practicing within the scope of
14 that license.

15 B. A person who provides other natural health care
16 services shall not be in violation of any law relating to the
17 healing arts as long as the person does not:

18 (1) perform surgery or any surgical procedure;

19 (2) prescribe or administer x-ray radiation to
20 any person;

21 (3) prescribe or administer a legend drug or
22 controlled substance to any person;

23 (4) recommend to any person the discontinuance
24 of a legend drug or controlled substance prescribed by a
25 licensed health care practitioner;

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1 (5) willfully diagnose or treat a physical or
2 mental health condition of a person and in so doing cause
3 significant bodily injury, significant physical or mental
4 illness or death; or

5 (6) hold out, state, indicate, advertise or
6 imply to a person that the person providing other natural
7 health care services is licensed, certified or registered under
8 a law relating to the healing arts in this state.

9 C. A person providing health care services who is
10 not licensed, certified or registered under any other provision
11 of law relating to the healing arts prior to providing such
12 services shall disclose to the client in a plainly worded
13 written statement:

14 (1) the fact that the person providing health
15 care services is not licensed, certified or registered under a
16 provision of law relating to the healing arts by this state;

17 (2) the nature of the services to be provided
18 and the theory upon which the services are based; and

19 (3) the degrees, training, experience,
20 credentials or other qualifications of the practitioner
21 regarding the health care services being provided.

22 D. A person providing health care services who is
23 not licensed, certified or registered under any other provision
24 of law relating to the healing arts by this state shall obtain
25 a signed acknowledgment from the client stating that the client

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1 has been provided with the information described in this
2 section, and the signed acknowledgment shall be maintained for
3 two years by the person providing the services. The client
4 shall be provided with a copy of the signed acknowledgment.

5 E. Enforcement of the Traditional Naturopathic
6 Practice Act shall be by the superintendent of regulation and
7 licensing pursuant to the Uniform Licensing Act.

8 Section 8. BOARD CREATED--APPOINTMENT--OFFICERS--
9 COMPENSATION.--

10 A. The "board of traditional naturopathy" is
11 created.

12 B. The board is administratively attached to the
13 regulation and licensing department.

14 C. The board consists of five members appointed by
15 the governor for terms of three years each. Three members
16 shall be traditional naturopaths and shall have been residents
17 of and practiced traditional naturopathy in New Mexico for at
18 least three years immediately preceding the date of their
19 appointment. Two members shall be appointed by the governor to
20 represent the public and shall be residents of New Mexico.

21 D. Members shall be appointed for staggered terms
22 of three years; provided that for initial terms, two members
23 shall be appointed for three years, two for two years and one
24 for one year. Terms of board members shall expire on June 30.
25 A board member shall serve until a successor has been appointed

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1 and qualified. Vacancies shall be filled for the remainder of
2 the unexpired term in the same manner as the original
3 appointment.

4 E. A board member shall not serve more than two
5 consecutive full terms, and a board member who fails to attend
6 three consecutive meetings, after receiving proper notice,
7 shall be recommended for removal as a board member unless
8 excused for reasons established by the board.

9 F. The board shall elect annually from its
10 membership a chair and other officers as necessary to carry out
11 its duties.

12 G. The board shall meet at least once each year.
13 Other meetings may be called by the chair, a majority of board
14 members or the governor. A simple majority of board members
15 constitutes a quorum of the board.

16 H. Members of the board may be reimbursed as
17 provided in the Per Diem and Mileage Act but shall receive no
18 other compensation, perquisite or allowance. The board may
19 waive any payment of per diem or mileage.

20 Section 9. BOARD--POWERS AND DUTIES.--The board may:

21 A. enforce the provisions of the Traditional
22 Naturopathic Practice Act;

23 B. adopt, publish and file, in accordance with the
24 Uniform Licensing Act and the State Rules Act, all rules
25 necessary for the implementation and enforcement of the

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1 provisions of the Traditional Naturopathic Practice Act;

2 C. adopt a code of ethics;

3 D. adopt and use a seal;

4 E. adopt rules implementing continuing education
5 requirements;

6 F. meet by telephone conference, if necessary to
7 make a quorum;

8 G. administer oaths and take testimony on any
9 matters within the board's jurisdiction;

10 H. conduct hearings upon charges relating to the
11 discipline of licensees, including the denial, suspension or
12 revocation of a license or the supervision or admonition of a
13 licensee, in accordance with the Uniform Licensing Act;

14 I. issue "specialty" or "certificate of
15 qualification" documents in specialized fields or areas of
16 practice related to traditional naturopathy, based upon
17 education and training;

18 J. grant, deny, renew, suspend, limit or revoke
19 licenses to practice traditional naturopathy;

20 K. provide for the examination of applicants for
21 licensure as traditional naturopaths and establish and collect
22 fees for each type of license;

23 L. keep a record of all examinations held, together
24 with the names and addresses of all persons taking the
25 examinations, and the examination results;

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1 M. notify each applicant in writing of the results
2 of an examination within twenty-one days after the results of
3 the examination are available to the board;

4 N. keep a licensee record in which the names,
5 addresses and license numbers of all licensees shall be
6 recorded together with a record of all license renewals,
7 suspensions and revocations;

8 O. provide for the granting and renewal of
9 licenses; and

10 P. keep an accurate record of all its meetings,
11 receipts and disbursements.

12 Section 10. REQUIREMENTS FOR LICENSURE.--The board shall
13 grant a license to practice as a traditional naturopath to a
14 person who submits in a timely manner:

15 A. the completed application for licensure on the
16 form provided by the board;

17 B. all documentation required by the board;

18 C. the required fees;

19 D. proof that the applicant has completed a board-
20 approved education program in traditional naturopathy; and

21 E. proof that the applicant has passed an
22 examination approved and required by the board.

23 Section 11. GRANDFATHER PROVISION.--For one year from the
24 effective date of the rules adopted by the board to implement
25 the Traditional Naturopathic Practice Act, the board shall

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1 grant a license to practice as a traditional naturopath to a
2 person who submits in a timely manner:

3 A. the completed application for licensure on the
4 form provided by the board;

5 B. all documentation required by the board;

6 C. the required fees; and

7 D. proof that the applicant has:

8 (1) completed a board-approved education
9 program in traditional naturopathy;

10 (2) provided traditional naturopathy services
11 in New Mexico for at least two years immediately preceding
12 making the application; or

13 (3) passed an examination in traditional
14 naturopathy approved and required by the board.

15 Section 12. EXAMINATIONS.--The board:

16 A. shall establish procedures to ensure that
17 examinations for licensure are offered at least once a year;

18 B. shall establish the deadline for receipt of
19 applications for licensure examinations and other rules
20 relating to the taking and retaking of licensure examinations;

21 C. shall establish the passing grades for
22 its approved examinations;

23 D. may approve, and use as a basis for
24 licensure, the examinations that are used for national
25 certification by another agency recognized by the board;

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1 E. shall require each qualified applicant
2 to pass a validated, objective written examination that covers
3 areas that are not included in other examinations approved by
4 the board; and

5 F. shall require that each applicant has completed
6 a board-approved educational program in traditional
7 naturopathy.

8 Section 13. REQUIREMENTS FOR TEMPORARY LICENSURE.--

9 A. The board may grant a temporary or reciprocal
10 license until the next licensure examination to a person who:

11 (1) is licensed to practice traditional
12 naturopathy in another state, district or territory of the
13 United States or in a foreign country and who has met all the
14 requirements for temporary licensure in New Mexico, as
15 determined by the board;

16 (2) submits the completed application for
17 licensure on the form provided by the board;

18 (3) submits the required documentation,
19 including proof of adequate education and training, as
20 determined by the board;

21 (4) submits the required temporary licensure
22 application fee; and

23 (5) submits an affidavit stating that the
24 applicant has not been found guilty of unprofessional conduct
25 or incompetence.

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1 B. A temporary licensee may engage only in those
2 activities authorized on the temporary license.

3 C. A temporary license may be issued for a
4 period of time not to exceed the time necessary to notify
5 applicants of their passage or failure or beyond the next
6 licensure examination.

7 Section 14. LICENSURE BY ENDORSEMENT.--The board may
8 grant a license to practice traditional naturopathy to a person
9 who is licensed and in good standing as a traditional
10 naturopath, or its equivalent in another state or territory of
11 the United States or a foreign country, and who is a graduate
12 of a traditional naturopathic school if the applicant:

13 A. submits the completed application for licensure
14 by endorsement on the form provided by the board, including
15 proof of licensure in good standing in all states in which the
16 applicant is or has been licensed;

17 B. submits the required documentation as determined
18 by the board;

19 C. submits the required fee for application for
20 licensure by endorsement;

21 D. submits an affidavit stating that the applicant
22 has not been found guilty of unprofessional conduct or
23 incompetence;

24 E. has passed the board-approved examination
25 that demonstrates knowledge of and skill in the application of

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1 traditional naturopathy and has since maintained uninterrupted
2 licensure in a state or territory of the United States or a
3 foreign country with licensure standards at least equivalent to
4 New Mexico's; and

5 F. has passed a written examination on New Mexico
6 laws and rules that pertain to the practice of traditional
7 naturopathy.

8 Section 15. TRADITIONAL NATUROPATHIC SCHOOLS AND
9 SPECIALTY OR CERTIFICATE OF QUALIFICATION PROGRAMS.--

10 A. The board shall establish by rule procedures for
11 approval of traditional naturopathic schools, continuing
12 education and speciality and certificate of qualification
13 education, pursuant to the Traditional Naturopathic Practice
14 Act.

15 B. The board shall not approve traditional
16 naturopathic school educational programs that provide less than
17 one thousand five hundred classroom hours or ninety semester
18 credits of training, and they may include instruction in:

19 (1) anatomy, physiology and pathology;

20 (2) nutritional information that may include
21 food, food extracts, dietary therapy and nutritional
22 counseling;

23 (3) medicines of mineral, animal and botanical
24 origin that may include vitamins, minerals, plant substances,
25 homeopathic preparations, topical medicines, enzymes, digestive

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1 aids and whole gland thyroid;

2 (4) naturopathic physical medicine, bodywork
3 and hygiene;

4 (5) biofeedback and lifestyle counseling;

5 (6) business, including ethics;

6 (7) hydrotherapy;

7 (8) first aid and cardiopulmonary
8 resuscitation; and

9 (9) traditional naturopathic examination and
10 diagnosis.

11 Section 16. CONTINUING EDUCATION--PROGRAM APPROVAL.--The
12 board shall establish by rule the amount and program criteria,
13 including provider registration, for continuing education
14 required for license renewal. All professional traditional
15 naturopathic organizations in New Mexico are approved.

16 Section 17. LICENSE RENEWAL.--

17 A. A licensee shall renew a license annually by
18 submitting, prior to the date established by the board:

19 (1) the completed application for renewal on
20 the form provided by the board; and

21 (2) the required renewal fee.

22 B. The board may require proof of continuing
23 education and other requirements for renewal.

24 C. A sixty-day grace period shall be allowed for
25 each licensee after the end of the licensing period, during

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1 which time the license may be renewed by submitting:

2 (1) the completed application for renewal on
3 the form provided by the board;

4 (2) the required renewal fee; and

5 (3) the required late fee.

6 D. A license not renewed at the end of the grace
7 period shall be considered expired, and the licensee shall not
8 be eligible to practice within the state. The board may extend
9 the reinstatement period and fees in extenuating circumstances,
10 to be determined on a case-by-case basis.

11 Section 18. FEES.--The board shall establish a schedule
12 of reasonable nonrefundable fees not to exceed the following
13 amounts:

14 A. application for licensure, five hundred dollars
15 (\$500);

16 B. application for reciprocal licensure, five
17 hundred dollars (\$500);

18 C. application for temporary licensure, two hundred
19 fifty dollars (\$250);

20 D. examination, not including the cost of any
21 nationally recognized examination, two hundred dollars (\$200);

22 E. annual license renewal, five hundred dollars
23 (\$500);

24 F. late fee for license renewal, one hundred
25 dollars (\$100);

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1 G. expired license renewal, seven hundred dollars
2 (\$700);

3 H. annual continuing education provider
4 registration, two hundred dollars (\$200); and

5 I. reasonable fees for necessary administrative
6 expenses.

7 Section 19. DISCIPLINARY PROCEEDINGS--JUDICIAL REVIEW--
8 APPLICATION OF UNIFORM LICENSING ACT.--

9 A. In accordance with the procedures contained in
10 the Uniform Licensing Act, the board may deny a license or
11 revoke or suspend any permanent or temporary license under the
12 Traditional Naturopathic Practice Act upon findings by the
13 board that the licensee or applicant:

14 (1) is guilty of fraud or deceit in procuring
15 or attempting to procure a license;

16 (2) has been convicted of a felony. A
17 certified copy of the record of conviction shall be conclusive
18 evidence of such conviction;

19 (3) is guilty of incompetence as defined by
20 board rule;

21 (4) is habitually intemperate or is addicted
22 to the use of alcohol or habit-forming drugs or is addicted to
23 any vice to such a degree as to render the licensee or
24 applicant unfit to practice as a traditional naturopath;

25 (5) is guilty of unprofessional conduct, as

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1 defined by board rule;

2 (6) is guilty of a violation of the
3 Controlled Substances Act;

4 (7) has violated a provision of the
5 Traditional Naturopathic Practice Act or rules promulgated
6 by the board;

7 (8) is guilty of failing to furnish the board,
8 its investigators or representatives with information requested
9 by the board;

10 (9) is guilty of willfully or negligently
11 practicing beyond the scope of traditional naturopathy;

12 (10) is guilty of aiding or abetting the
13 practice of traditional naturopathy by a person not licensed by
14 the board;

15 (11) is guilty of practicing or attempting to
16 practice under an assumed name;

17 (12) advertises by means of knowingly false
18 statements;

19 (13) advertises or attempts to attract
20 patronage in an unethical manner prohibited by the Traditional
21 Naturopathic Practice Act or the rules of the board;

22 (14) has been declared mentally incompetent by
23 regularly constituted authorities;

24 (15) has had a license, certificate or
25 registration to practice traditional naturopathy revoked,

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1 suspended or denied in any jurisdiction of the United States or
2 a foreign country for actions of the licensee similar to acts
3 described in this subsection; or

4 (16) fails, when diagnosing and treating a
5 patient, to possess or apply the knowledge or to use the skill
6 and care ordinarily used by reasonably well-qualified
7 traditional naturopaths practicing under similar circumstances,
8 giving due consideration to the locality involved.

9 B. Disciplinary proceedings may be instituted by a
10 complaint of a person, pursuant to the Uniform Licensing Act.

11 C. A person filing a complaint shall be
12 immune from liability arising out of civil action if the
13 complaint is filed in good faith and without actual malice.

14 D. If a licensee is found by the board to have
15 violated the Traditional Naturopathic Practice Act, the
16 licensee shall bear the costs of disciplinary proceedings.

17 Section 20. FUND CREATED.--

18 A. The "traditional naturopathic fund" is created
19 in the state treasury.

20 B. All money received by the board pursuant to the
21 Traditional Naturopathic Practice Act shall be deposited with
22 the state treasurer for credit to the traditional naturopathic
23 fund. The state treasurer shall invest the fund as other state
24 funds are invested, and income from investment of the fund
25 shall be credited to the fund. All balances in the fund shall

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1 remain in the fund and shall not revert to the general fund.

2 C. The fund shall be administered by the board, and
3 money in the fund is appropriated by the legislature to the
4 department to meet the necessary expenses incurred in carrying
5 out the provisions of the Traditional Naturopathic Practice
6 Act. Money in the fund shall be expended upon warrants issued
7 by the secretary of finance and administration upon receipt of
8 vouchers signed by the superintendent of the department.

9 Section 21. PENALTIES.--A person who violates a provision
10 of the Traditional Naturopathic Practice Act is guilty of a
11 misdemeanor and upon conviction shall be punished pursuant to
12 Section 31-19-1 NMSA 1978.

13 Section 22. CRIMINAL OFFENDER EMPLOYMENT ACT.--The
14 provisions of the Criminal Offender Employment Act shall govern
15 consideration of criminal records required or permitted by the
16 Traditional Naturopathic Practice Act.

17 Section 23. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--
18 The board of traditional naturopathy is terminated on July 1,
19 2013 pursuant to the Sunset Act. The board shall continue to
20 operate according to the Traditional Naturopathic Practice Act
21 until July 1, 2014. Effective July 1, 2014, the Traditional
22 Naturopathic Practice Act is repealed.

23 Section 24. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is July 1, 2007.